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Panel: Ethnicity and its Contemporary Challenges in Eastern Europe

**ETHNIC RIGHTS AND NATIONAL PERSONAL AUTONOMY
UNDER INTEGRATION**

Traditional minority rights' concept is now under question because of integration tendencies. Within the European Union the difference between ethnic minority and majority became rather relative due to invisible borders, migration flows, equal socio-economic and political standards, and some other circumstances. Actually, only several European countries officially presented the list of the peoples which are considered to be ethnic minorities.

The key goal of this paper is to present the possibility of new approach to ethnic question on the base of adapted historical experience in order to initiate the discussion on the matter.

This approach proceeds from European theoretical and practical heritage. Precisely, the corner-stone of this alternative attitude to the ethnic question is the concept called "National Personal Autonomy". This theory originated in Austro-Hungary – one of the most multinational European state at that time. The national question preoccupied Austrian workers' movement and was reflected in its program and organization principles. The most prominent theoreticians of the national questions in Austro-Hungary were Karl Renner and Otto Bauer. Both of them successfully combined their political career with academic activity. Karl Renner represented Social Democratic Party in Austrian parliament and was considered to be a moderate politician. Otto Bauer was associated rather with a left-wing socialism. This authors put their concept in writing in "State and Nation" (1899) by K. Renner [9] and "The Question of Nationalities and Social Democracy" (1906-1907) by O. Bauer [6]. That theory differed from the traditional

ones and contained some innovative principles. They could be brought to the following provisions.

- Free ethnic self-identification. Every citizen of the state can join one or another ethnic group: it is a matter of his or her personal choice and no authority could control citizen's decisions.

- Non-territorial principle of autonomy. National autonomy must be provided for every ethnos, whether the members of an ethnic group had the territory of their own or not, or were majority or minority in a given area.

- A nation as a legal person in private and public law. Such legal status enables an ethnos to satisfy its cultural needs.

- State support of organized ethnic groups. Ethnic rights are to be guaranteed by state power by law and finances.

In general, K. Renner and O. Bauer contributed greatly to further understanding of national question. However, one can mention some weak points of their theory. First of all, the authors considered ethnic problems to be settled in multinational state of imperial character like Habsburg monarchy. Another vulnerable point was supposed state protection for ethnic groups. Actually, the theorists did not suggest any effective mechanism for nations' protection from state power.

The concept of Personal National Autonomy was abandoned after the Second World War and became almost forgotten by scientists and politicians for many years. When examining the causes of that circumstance one can partly agree with such implications as follows. The theory originated in Central Europe and after the First World War that concept was eradicated by the Bolsheviks. In the West the problem of ethnic minorities was pushed into the background; in contrast, human rights' concept became the matter of priority. As a result, academic interest to the untranslated archives has lessened [8]. Nevertheless, this implication is completely correct rather for Eastern Europe. At the same time; it is not quite clear why this theory was ignored in Central European countries outside the Soviet Union. It is known that Karl Renner who produced this concept possessed key state offices

(Chancellor of Austria in 1918-1920, 1945 and President of Austria in 1945-1950). However, he did not make any substantial steps to put his ideas into practice. Possibly, national question became less topical under collapse of Austro-Hungary and state making processes in more homogenous post-imperial countries. Actually, Otto Bauer wrote in his preface to the second edition of his aforesaid work: “The empire whose internal conflicts I have hoped to influence with my book in 1907 now no longer exist; and as early as 1909 I began to revise my evaluation of these conflicts, which ultimately brought the empire down...The political program I advocated in 1907 as a solution to the Austro-Hungarian nationalities problem has been passed over by history [6, p.6]. As for the West, unpopularity of National Personal Autonomy could be also explained by ideological reasons through its Austro-Marxist origin. As a matter of fact, ethnic problems were put forward once again only during the decay of the remaining empires. An increased interest to the national question was resulted from the revival of old forms of nationalism and the emergence of new forms [6, p. xi].

Nevertheless, after the First World War in some countries National Personal Autonomy concept was adopted as an official policy. Specifically, one can mention Ukrainian People’s Republic (1917-1920) and interwar Estonian Republic (1918-1940). In Estonia Cultural Autonomy of Ethnic Minority Act was passed in 1925. The document guaranteed cultural self-government for the Germans and the Jews (both of them were active in economy and culture of the country) and state protection of the Swedes and the Russians, represented mostly by peasants and artisans. According to the Act special lists of nationalities on the principle of free choice of ethnicity were compiled. The appropriate bodies of cultural self-government were also formed. After revival of Estonian Republic in 1991, “The Law on Cultural Autonomy for National Minorities” was adopted on the base of that legal document.

Nevertheless, Ukrainian case is the point of special interest for two reasons. First, Ukraine was a pioneer in the implementation of National Personal

Autonomy. Secondly, despite short-lived legal practice of the first Ukrainian state, the continuation of its experience (even in theory) was quite promising.

Precisely, “National-Personal Autonomy Act,” passed in 1918 by the Central Rada [1], became the part of Ukrainian Constitution adopted in the same year [4]. Recognizing the special value of human ethnicity and inalienable ethnic rights of the person this legal document elaborated the procedure of free ethnic self-identification and provided reliable system of exercising ethnic rights through appropriate structures (national unions) with legislative functions. Finally, the act established the legal mechanism of conflict resolution between ethnic and general state structures [1, p. 263–264]. Full implementation of that law was blocked by the defeat of Ukrainian sovereignty.

Ukrainian ethnic strategy after the collapse of the USSR was of ambivalent character. On the one hand, official draft law based on traditional foundation (“National Minority Acts”, 1992) was passed by Ukrainian parliament. On the other hand, alternative bill (“The National (Ethnic) Rights of Ukraine’s Citizens”, 1991) was elaborated by the activists of political association “Rukh” (People’s Movement of Ukraine). The second variant was not adopted by the parliament for political reasons; it was presented at academic forums [3] and proposed for public discussions

That non-official bill proceeded from “The National-Personal Autonomy Act” (1918). The main distinctive feature of the new draft was another understanding of ethnic rights. All the previous laws admitted the difference between minority and majority rights. New Ukrainian version implied the idea of universal and equal ethnic rights regardless of the size of an ethnic group and its status in a country (the document presented detailed list of those rights). That approach resulted in two important principals. First, in spite of the previous laws, there was no qualification concerning the number of nationality’s representatives for registering this ethnic group as a legal person. Secondly, all the nationalities have equal ethnic rights but different mechanisms of their protection in conformity with their status and historical peculiarities. For instance, in Ukraine the title nation constitutes the

majority of the population and, therefore, all the ethnic rights of the Ukrainians are automatically protected by the parliament according to the principle «one person – one voice». At the same time, small peoples have no possibility to influence state ethnic policy in such a way; hence, non-Ukrainians are to use other methods and technologies to defend their rights. In this connection, one can mention the case of Crimean Tatars. They are indigenes people that live on Ukrainian territory and have no their own statehood outside Ukraine. In spite of the Ukrainians, that ethnos did not make full use of the right on self-determination. So, the law determined possible ways and conditions of realization of that right for the Tatars, although that point was a matter of heated debates due to separation tendencies in Ukraine. The bill also concerned the appropriate right for stateless indigenes peoples living in Ukraine and partly in some neighboring countries (the Gagauz) and disperse ethnic groups living elsewhere in the world (the Roma people).

The next important point of the bill was the question of the relationship between state and nation. The document ordered to form special representative bodies of the nations (national unions) as legal persons to present and guarantee their rights and interests. So, those bodies were to be of state status to exercise government power in the frames of their competence. Moreover, the bill contained the provision about the supreme representative body of the national unions (National Congress) to harmonize and correct state ethnic strategy in Ukraine. In other words, those structures were to be shaped by, from, and for those peoples. As a result, the nationalities from the passive object of state protection turned into the active subject of state ethnic policy.

Even in the days of elaborating of that draft the authors recognized that the bill was not of final character and needed to be supplemented and polished. Besides, in new Ukrainian realities some of its provisions became rather obsolete. Nevertheless, innovative character of this document gave impulse to further investigation. Nowadays Ukraine is inclined to European vector of development. This fact stimulated the search of optimal ways and methods of integration strategy and, thus, engaged Ukrainian political and academic circles more into European

issues. As a result, the problems and challenges of the European Union has become a matter of common concern, especially the questions of European identity, preserving ethnicity, new models of citizenships.

In regard to integration process in modern Europe, it is reasonable to pay attention to some important issues. The collapse of empires in the XX-th century did not eradicate imperial schemes of national relations and appropriate mentality. Dismantling of old empires resulted in appearance of their diminished copies. New state units, despite of their more ethnic homogeneity, reproduced all imperial attributes of their predecessors. Thus, instead of resolving ethnic problems there was their particularization. Abovementioned principle of minorities' protection was proposed by world political thought to hold out against that tendency. In our days observing minority rights is regarded as one of the democracy indicators and put forward as an entry condition when joining the European Union (Copenhagen criteria) [7, p. 13]. Other European structures also adhere to the traditional minority concept [5].

At the same time, practical experience shows that exercising minority rights in the EU and outside this association is not very effective because of several reasons. First, as mentioned above, only several countries of the European Union presented the list of the peoples which they regarded as minorities. Secondly, it is rather difficult to give accurate definition of the notion "minorities": on the one hand, some of them constitute majority of the population in certain regions of their country; on the other hand, some minorities are indigenes peoples and claim their own statehood with the status of the title nation there.

It is also generally recognized that minority rights must to be protected by state power. At the same time, it is the state that has always violated the ethnic rights of its citizens in one or another way. No one individual could harm any ethnic person or nation as a whole like the state could. Genocide, ethnic discrimination, and restrictions were carried out by state in the name of state interests. At the same time, it was no doubt that state power must be turned into defense of ethnic rights. Actually, it must be done by ethnic entities themselves.

The question of identity is another controversial issue in modern Europe. European identity is considered in the frames of two main concepts (“Union Nationalism” and “Constitutional Patriotism”) which does not concern ethnic dimension of the problem. Nevertheless, it is proved that ignoring the ethnicity question could lead to serious problems up to armed ethnic conflicts and terrorism danger.

In this respect, one can suggest some general principles based on the adopted National Personal Autonomy concept to help in resolving of these controversial issues. The first one is the recognizing of fundamental value of ethnicity and, therefore, ethnic rights for its preservation. Ethnic rights must be regarded as inalienable human rights of all living beings, like right on life and other natural rights. The second principle implies universal character and complete unconditional equality of ethnic rights of all nationalities, notwithstanding of their size, state status and peculiarities. No division into majorities and minorities must be employed when dealing with peoples. Finally, reliable system of ethnic rights’ protection and free exercising is to be elaborated and introduced in European space. This system must have strong law bases both on national and communitarian levels.

In this connection, it is supposed, that under integration the international legislative act must be produced and put into life – “European Charter on Ethnic Human Rights”. We know a precedent of that kind – European Social Model based on Charter on Social Rights and some other documents. Likewise, European Ethnic Model could also be elaborated and suggested for consideration. This model must have its theoretical and legal foundations. The latter should be a part of European *acquis communautaire*.

Practical advantages of such approach could be as follows. It helps to avoid reproduction of imperial ethnic situation in newly-organized countries and, therefore, it could stop disintegration processes in European region. Then, this concept would really exclude open and hidden discrimination of minorities. Finally, realization of ethnic rights’ model could liquidate the contradiction

between two opposite tendencies: communitarian course of the European community structures on the one hand, and division of the same ethnos into majority and minority in different European states.

As a final point, a conclusion involving the mentioned in this paper could be offered. The main principles of the National Personal Autonomy under integration implies: fundamental value of ethnicity; universal inalienable human ethnic rights with different methods of their protection instead of minority rights; shaping of special representative structures formed by, from, and for these peoples in place of traditional state protection; strong appropriate legal basis both in local and communitarian levels including European Charter on Ethnic Rights.

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